

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

IVORY L. HERRON,

Defendant-Appellant.

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UNPUBLISHED

April 6, 1999

No. 198353

Recorder's Court

LC No. 95-012810 FY

Before: Holbrook, Jr., P.J., and White and J. W. Fitzgerald,\* JJ.

WHITE, J. (concurring).

I agree with the majority that counts I and II should have been charged, and presented to the jury, in the alternative, and further conclude that defendant's conviction of involuntary manslaughter after his conviction of negligent homicide violated MCL 768.33; MSA 28.1056, which states, in pertinent part:

When a defendant shall be acquitted or convicted upon any indictment for an offense, consisting of different degrees, he shall not thereafter be tried or convicted for a different degree of the same offense.

Defendant's conviction of negligent homicide precluded his subsequent conviction of involuntary manslaughter arising from the same vehicular death.

I concur in the majority's discussion of the second and third issues.

/s/ Helene N. White

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\* Former Supreme Court justice, sitting on the Court of Appeals by assignment.